

Memorandum

To : Interested Parties

Date: September 1, 2006

From : Mr. Robert Lambert
Acting Assistant Chief Counsel

Subject: Distribution of Current Legal Digests (CLD's)

Attached for your review is a copy of Current Legal Digest (CLD) Number 1073. This CLD and all future CLDs will be posted on the Board of Equalization website at <http://www.boe.ca.gov/sutax/sutdcld.htm>. At this web page, you may register to receive notification of future CLDs electronically and have the opportunity to submit comments via email regarding the contents of the CLDs.

The annotations included in each CLD are new proposed annotations and/or suggested revisions or deletions of existing annotations. **Please note**, the text of the new annotations and/or suggested revisions of existing annotations contained in the attached CLD is a **draft** version and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation.

CLDs will be posted on the website for 30 days, at which time comments and/or suggested modifications submitted by staff or interested parties are taken into consideration and addressed. After the 30-day period expires, the CLD containing the final text approved by the Board's legal staff will be moved to the "comment period closed" section of the web page until it is published in the *Business Taxes Law Guide*.

Summary (Jan 1, 2006- September 1, 2006)

Proposed additions (10)
Proposed revisions (4)
Proposed deletions (5)

Attachment
Cld1073

CALIFORNIA STATE BOARD OF EQUALIZATION

CURRENT LEGAL DIGEST NO. 1073

September 1, 2006

335.0043.500 Lease of Mobile Transportation Equipment (MTE) – Refund Claim. Under the terms of its lease agreement, a lessor of MTE is required to maintain, repair or alter the MTE and “shall be responsible for purchasing all repair parts and maintenance items for resale to Lessee.” The lessor owned and leased the equipment out of state for more than a year before bringing the MTE into California, i.e., the lessor did not purchase the equipment for use in California. The lessor then purchased parts used to repair the leased MTE and paid tax reimbursement to the California parts vendors. The lessor filed a claim for refund for the tax reimbursement it paid on the parts in the belief that the parts were purchased for resale to their lessee(s) pursuant to the lease agreement.

Regulation 1661 provides that “with respect to leases of mobile transportation equipment, the sale to the lessor is the retail sale and the lessor is the consumer of the equipment.” The definition of MTE includes “any tangible personal property which is or becomes a component part of such equipment.” Therefore, the lessor is not the retailer of the parts to the lessee; rather, the lessor is purchasing the parts for use in connection with the lease. In addition, only a person who has timely elected to measure the use tax liability by fair rental value may purchase, ex-tax for resale, equipment that becomes a component part of the MTE. (Rev. & Tax. Code Section 6092.1). Under these facts, the lessor could not make such a timely election because the lessor had not California use tax liability on its purchase and use of the equipment.

Notwithstanding how the transaction is characterized in the relevant lease agreements, the purchase of the repair parts by the lessor is not a purchase for resale under California law. The lessor did not make a timely election to report tax based on fair rental value and therefore could not issue a valid resale certificate to its California vendors. Since the lessor is the consumer, rather than the retailer, of MTE and items that become component parts of the MTE, the lessor, through its retailer, cannot claim a refund of tax reimbursement, as no excess tax reimbursement was collected. (Rev. & Tax. Code Section 6901.5). 5/11/06. (2007-1).

Note: The new proposed annotations contained in this CLD are drafts and may not accurately reflect the text of the final annotation.

375.0990 Raw Film is Tangible Personal Property. A broadcasting company purchases raw film and initially uses it filming a television show. The film is then sent to a second company to develop. Then the developed film is sent to a third company where it is archived for possible future use and selected scenes are transferred from film to video. The editor, director, and producer refer back to and use the developed film to create the final edited product, which may require a number of film “cuts.”

Revenue and Taxation Code section 6378, subdivision (a), provides a partial exemption from sales or use tax for the following:

“(1) Tangible personal property purchased for use by a qualified person to be used primarily in teleproduction or other postproduction services.

“(2) Tangible personal property purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any property described in (1).”

Although the raw film is considered to be tangible personal property under Section 6378, the broadcasting company’s first use of the raw film was for principal photography (filming the television show) and not for use in postproduction services. A person who produces a television show or performs “qualified production services” is the consumer of raw film used for those purposes. Therefore, sales tax applies to the sale of raw film to such persons or use tax applies to the purchase and use of the raw film by such persons.

In addition, in order to qualify for the partial tax exemption, the tangible personal property must be “primarily” used by the purchaser in “teleproduction or other postproduction services.” The developing of the film and the transferring and archiving may be “teleproduction or other postproduction services” but only the use of the property in such activities by the purchaser is considered for the primary use test. Therefore, all the time the film is in the possession of the second and third companies does not qualify as use in “teleproduction or other postproduction services” for the primary use test. 3/7/06. (2007-1).

Delete Annotation 465.0130, **Erroneous Use Tax Paid on Lease of MTE (3/25/93)**, because it is inaccurate.

Delete Annotation 550.0064, **Candy – 80/80 Sale (5/31/90)**, because it has been superseded by changes to Regulation 1603.

Note: The new proposed annotations contained in this CLD are drafts and may not accurately reflect the text of the final annotation.

Revise annotation 570.0372 **Specific Payload.** For purposes of determining whether the first functional use was out of state, if a new truck is dispatched from out of state to pick up a specific payload in California, the first use of that truck occurs outside the state. It is not necessary that the “specific payload” be identified by serial numbers or other identification of such specificity. For example, instructions to pick up appliances at the Ontario warehouse at a specific time and date is sufficient for the load to be a specific payload. On the other hand, if it is dispatched to the warehouse to pick up the next available payload, it would not qualify as a “specific payload,” but rather is “any payload.” ~~as discussed in the annotation.~~ 1/5/94. (Am. 2000-1). (Am. 2007-1).

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